

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ANTOINE TAYLOR,

Plaintiff,

**ORDER**

CV 11-0934 (GRB)

-against-

KEITH ROGICH,

Defendant.

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**GARY R. BROWN, United States Magistrate Judge:**

On January 31, 2014, defendant Keith Rogich (“Rogich”), filed a notice of appeal in the United States Court of Appeals for the Second Circuit, seeking interlocutory review of this Court’s January 2, 2014 Memorandum and Order denying defendant’s motion for judgment as a matter of law. Docket Entry (“DE”) [123].

“Appeals under the collateral order doctrine do not generally divest the district court of jurisdiction over issues not under consideration in the appeal.” *City of New York v. Beretta U.S.A. Corp.*, 234 F.R.D. 46, 50 (E.D.N.Y. 2006). An exception to this principle is the dual jurisdiction rule, which divests a district court of jurisdiction immediately upon the filing of a request for interlocutory review under the collateral order doctrine only in cases “respecting a right not to be tried,” such as double jeopardy, foreign sovereign immunity, Eleventh Amendment immunity, and qualified immunity. *Id.* at 51 (citing *United States v. Dunbar*, 611 F.2d 985, 987-89 (5<sup>th</sup> Cir. 1980); *accord Will v. Hallock*, 546 U.S. 345, 350 (2006)).

Accordingly, because the appeal involves the claim of qualified immunity, the dual jurisdiction rule applies. This Court hereby stays the case pending a determination of

defendant's appeal.

Dated: Central Islip, New York  
February 7, 2014

/s/ Gary R. Brown  
United States Magistrate Judge